United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL

Advice Memorandum

DATE: September 27, 2004

TO : Celeste Mattina, Regional Director
Region 2

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: Verizon Communications
Case 2-CA-36208, and
Verizon New York, Inc.
Case 2-CA-36213

530-6067-6067-4900
530-6067-6067-9500
530-6067-6067-9900

This case was submitted for advice on whether the Employer violated Section 8(a)(5) of the Act by refusing to provide the Union with information regarding a possible sale of a portion of the Employer's business.

We conclude that the Employer was not required to provide the requested information because, whether it was seeking the information for effects bargaining or to investigate a potential contract violation, the Union's request was, and is, not yet relevant.

FACTS

The Unions and the Employer are parties to contracts covering over 5,000 of the Employer's upstate New York employees in its (1) plant, (2) accounting, and (3) traffic/operator services departments.[1] All of the relevant contracts are effective until August 2, 2008.

In February, 2004[2], Verizon representatives informed Union representatives that the Employer was considering selling the upstate New York portion of its business and had put out requests for proposals (RFPs) to potential buyers. The Union immediately requested a copy of the RFP and the Employer refused.

Over the course of the next several months, the Union requested the following information:

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[1] The national CWA (District One) is signatory to the plant and accounting contracts, and Local 1103 is signatory to the traffic/operator contract. The two unions will be referred to collectively as "the Unions." Verizon New York is owned by Verizon Communications, and they will be referred to collectively as either Verizon or "the Employer."

[2] All dates are in 2004 unless otherwise specified.

- all RFPs or other solicitations by Verizon for offers to purchase Verizon assets in Upstate New York
- any discussions, explanations or letters of interpretation associated with the RFPs or other solicitations about the existing workforce, union recognition of the existing workforce, the collective-bargaining agreements, and the pension plan and/or obligations under the pension plan
- copies of all offers made to Verizon for Upstate New York assets, including copies of any documents which discuss the existing workforce, union recognition of that workforce, the existing collective bargaining agreements, and the pension plan and/or obligations under it

The Union offered to accommodate privacy concerns, and agreed in advance to redact price information and to negotiate other confidentiality issues as needed.

The Employer has refused to provide any of the information, maintaining that the information is confidential and that, because there is not yet any agreement with a buyer, the information requested by the union is not relevant and the request for the information is premature. The Employer has indicated that it would be in touch with the Union if there should be a sale.

The Union claims that the information is relevant now. It points to a Job Security Letter (JLS) incorporated in the collective bargaining agreements prohibiting Verizon from laying off or voluntarily transferring employees as a result of a "process change", expressly including office closures. In essence, the Union claims that the Job Security Letter prohibits Verizon from removing unit employees from its payroll even in the event of a sale of its operations. The Union points to a recent sale of a Verizon facility in Hawaii, where the employees were laid off and offered positions with the new entity. The Union claims the Job Security Letter covering the New York employees would prohibit such a layoff, even though the bulk of the workforce was re-employed by the new entity. In the Union's view, while the Employer is soliciting interest in its upstate New York facilities the Union needs to know the Employer's plans with regard to its workforce, so the Union can determine whether to enforce its Job Security Letter or agree to waive it. The Union has also requested the RFP to ensure that the terms of a sale include a requirement that the buyer assume the collective-bargaining agreements and collective-bargaining relationship with the Union.

The Union has also received reports from employees that a group of executives representing a prospective buyer have recently been touring the upstate New York plants.

ACTION

We agree with the Region that, at this time, the Employer is not required to provide the Union with the Request for Proposals (RFP) or any of the other requested information regarding a possible sale of its upstate New York operations. The Union's request for the information is premature both for effects bargaining, and even to investigate a possible violation of the Job Security Letter. The Region should dismiss these Section 8(a)(1) and (5) charges, absent withdrawal.

As part of its duty to bargain in good faith, an employer must comply with a union's request for information that will assist the union in fulfilling its responsibilities as the employees' statutory representative. This includes information that is relevant and reasonably necessary for negotiating or administering and policing a collective bargaining agreement.[3]

While information pertaining directly to employees within the bargaining unit is presumptively relevant, information not on its face directly related to unit employees must be produced only if the union can make a showing of its relevance to the collective bargaining process.[4] When an employer is transforming its operations, such as by merger or sale, a union is entitled to the formal decisional agreements executed between the parties, so that the union can bargain about the effects of the transaction on its members.[5] However, since a union may bargain only about the "effects" of a merger decision, it may not "request information for the purpose of intruding into the negotiations between merger partners."[6] The Board has also

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[3] NLRB v. Acme Industrial Co., 385 U.S. 432 (1967).

[4] Detroit Edison Co., v. NLRB, 440 U.S. 301, 303 (1979); San Diego Newspaper Guild v. NLRB, 548 F.2d 863, 867 (9th Cir. 1977).

[5] See Children's Hospital, 312 NLRB 920, 930 (1993) (where contract negotiations were imminent and proposed merger would "undoubtedly" have been an issue, union entitled to copy of merger agreement to bargain about the "potential impact of the merger on the bargaining unit").

[6] Providence and Mercy Hospitals v. NLRB, 93 F.3d 1012, 1018 (1st Cir. 1996).

held that where an employer is not obligated to bargain over a decision, it is not obligated to furnish information concerning that decision.[7]

Information may also be relevant to a union for purposes of determining whether an employer violated a collective-bargaining agreement.[8] However, when a union asks for information which is not presumptively relevant, the showing by the union "must be more than a mere concoction of some general theory" which explains how the information would be useful in determining whether the employer has committed "some unknown contract violation."[9] Rather than "mere suspicion," a union must demonstrate the "reasonable and probable relevance" of the requested information.[10]

Applying these principles, we conclude that the Union has failed to demonstrate the relevance of the requested information at this time. Any interest the Union has in obtaining the information for effects bargaining is clearly premature. In Willamette Tug & Barge Co.,[11] the Board rejected the contention that an employer must provide notice to a union for effects bargaining purposes as soon as a sale is "under active consideration."[12] The Board noted that sales negotiations may be complex and, even after the purchaser and seller agree on the terms, other contingencies may remain such as obtaining financing, and governmental clearances and approvals.[13] Similar considerations apply here. Although the Employer has issued an RFP and apparently received some expression of preliminary interest from potential buyers, there is no indication that it has entered into a sales agreement. Although Willamette did not address an employer's duty to provide information, it did address the duty to engage in effects bargaining, and it

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[7] BC Industries, 307 NLRB 1275 fn.2 (1992).

[8] San Diego Newspaper Guild, 548 F.2d at 868.

[9] Ibid.

[10] Sheraton Hartford Hotel, 289 NLRB 463 (1988).

[11] 300 NLRB 282 (1990).

[12] 300 NLRB at 282, overruling Walter Pape, 205 NLRB 719 (1973).

[13] Ibid.

indicates that the Board would not require this Employer to engage in effects bargaining at this preliminary stage. Since the parties are not engaged in effects bargaining, and the Board would not require the Employer to do so at this stage, then the information is not yet relevant for effects bargaining purposes.

The Union's assertion that it needs the information to enforce its contractual rights under the Job Security Letter is too speculative. It has not provided any evidence to show that the Employer has or will violate the JLS, but instead relies purely on "suspicion or surmise."[14] The recent reports that a potential buyer is touring the plants shows that the Employer is, in fact, talking with potential buyers. However, this does not show that a sale is imminent, or even that the Employer has found a buyer or executed a sales agreement.[15] If and when the Employer is closer to selling its upstate New York operations, the Union can renew its request for information based on more concrete evidence of a contract violation.

Accordingly, the Region should dismiss these charges, absent withdrawal.

B. J. K.

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[14] Southern Nevada Home Builders Assn., 273 NLRB 350, 352 (1985), citing San Diego Newspaper Guild, supra.

[15] Cf. Providence and Mercy Hospitals v. NLRB, 93 F.3d at 1019 and 1020 (employer required to provide information relevant to merger where hospitals presented the planned merger to employees and media as a fait accompli, and professed "near-certainty that the merger would eventuate").